IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8015 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANIBEN HASMUKHBHAI KUMBHAR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 17/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has,by filing this petition under Article 226 opf the Constitution of India, challenged the legality and validity of the order of detention dated 15.6.2000. Annexure-A, in respect of the petitioner passed by respondent no. 2 in exercise of

powers conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985(for short 'the Act').

2. As per the papers of grounds of detention, the petitioner-detenu is a bootlegger within the meaning of sec. 2(b) of the Act and that her activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at the subjective satisfaction, the detaining authority has placed reliance on six prohibition case, referred to in the grounds of detention, Annexure-B. He passed an order of detention dated 15.6.2000, which is challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed affidavits-in-reply, in reply to the main petition controverting the grounds of attack mentioned in the memo of petition.

4. Ms. Subhadraben Patel, learned advocate for the petitioner has argued that looking to the grounds of detention, Annexure-B, in para-5, the detaining authority has taken into consideration less drastic alternative remedy under sec. 57(c) of the Bombay Police Act, which he was not entitled to take into consideration because for passing an order under sec. 57(c) of the Bombay Police Act the petitioner ought to have been convicted in, at least three cases, which is not there in this case, and, therefore, the order of detention is illegal and bad in law. She has cited an authority of Jayantilal Nenumel Ramnani vs. Commissioner of Police, Rajkot & Ors., reported in 2000(2) G.L.h. 166, wherein this Court has held that grounds for not taking action against the petitioner under sec. 57(c) of the Act, which are considered while passing the order of detention, are not the grounds which are stated in the affidavit-in-reply. In the grounds of detention, the ground of S. 57(C) of the Bombay Police Act was considered wgucg was not possible to be resorted to for the reason that the two convictions are required for taking action against the petitioner under the said provision, and, therefore, this is the case of non application of mind and, therefore, order of detention is bad in law.

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention dated 15.6.2000 passed by respondent no. 2 in respect of detenu is set aside. The detenu is ordered to be released forthwith, if she is not required to be detained

in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)

mandora/